Supreme Court, U.S.
FILED
JAN 10 2000
CLERK

No. 99-982

In The

Supreme Court of the United States

JOHNITA F. STEINHILBER,

Petitioner,

v.

MICHAEL S. MCFARLAND, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. WHETHER THE CIRCUIT COURT ERRED IN FINDING THAT PETITIONER WAS NOT DENIED A RIGHT TO A JURY TRIAL IN THE DISTRICT COURT AS THE REMEDIES SOUGHT AND GRANTED AGAINST HER WERE EXCLUSIVELY EQUITABLE IN NATURE?

II. WHETHER PETITIONER WAS DEPRIVED OF A FULL, FAIR AND PROPER JURY TRIAL BY REASON OF THE DISTRICT COURT'S USE OF FACTUAL STIPULATIONS IN MAKING CERTAIN PRETRIAL AND TRIAL RULINGS?

LIST OF PARTIES

Johnita F. Steinhilber, Petitioner; Robert V. Steinhilber, co-defendant (and Petitioner in Case No. 99-827 presently before the Court); Winnebago South, Inc., a Missouri corporation, co-defendant; Michael S. and Donna C. McFarland, Robert F. and Cheryl Morgan, Norman R. and Phyllis A. Cates, Wayne E. and Annabell Lasley, Richard A. and Bonnie L. LaPointe, Glen G. and Opal Pittman, G.H. and Harriett L. Ricker, Orson A. and Glenna M. Rau, Gary and Carolyn Sue Spears, Paul and Juanita L. Schafer, Robert J. and Anna E. Schumacher, Christ and Sophia Skiriotis, S.N. and Irene P. Whitcanack, Arthur and Kathleen Zago, Respondents.

CORPORATE DISCLOSURE

There are no parent corporations involved, and there are no publicly held companies involved, only the privately held corporation, co-defendant Winnebago South, Inc.

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The Opinions below are attached to petitioner's Petition at Appendices 1, 2 and 3.

JURISDICTION

The Judgment of the Court of Appeals for the Eighth Circuit was entered on August 11, 1999. A Petition for Rehearing was filed and the Order denying the Petition was entered September 16, 1999. Petitioner invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner adequately sets forth the constitutional and statutory provisions involved in this Petition.

STATEMENT OF THE CASE

This cause comes before this Court after having endured a long and twisted legal path. This case was originally filed in December of 1971. The fundamental claim made in this case is based upon the Interstate Land Sales Full Disclosure Act ("ILSA"), 15 U.S.C. § 1703, *et seq.* ILSA became effective April 28, 1969. Petitioner Johnita F. Steinhilber ("JFS") and her husband, co-defendant Robert V. Steinhilber ("RVS") and their company, Winnebago South, Inc. ("WSI"), were developing a real estate subdivision and in doing so, filed a Statement of Record and

Property Report (the "Property Report") pursuant to the requirements of ILSA. The development failed, this case was filed and the district court appointed a Receiver of WSI's assets.

On March 7, 1973, this case was designated to proceed as a class action under Fed.R.Civ.P. 23(b)(1) and (2). The class was later redefined to those persons who purchased lots between April 28, 1969 and October 22, 1971.

Discovery proceeded, and after a significant delay in the prosecution of the case, motions for partial summary judgment filed by virtually all of the parties were briefed and heard by the district court. The district court ruled on the summary judgment motions, making certain determinations from which RVS and JFS appealed, and the matter thereafter eventually (and finally) went to a jury trial. The district court presided over a twenty-eight day jury trial (conducted between November 16, 1995 and February 13, 1996) which resulted in an advisory verdict against RVS on all five counts related to him and against JFS on four out of five counts related to her. After numerous post-trial motions, the District Court filed its Judgment in a Civil Case on March 14, 1997, which was entered on March 19, 1997. RSV thereafter filed a Motion For Judgment As A Matter Of Law under Fed.R.Civ.P. 50(b), or, in the alternative, for a New Trial, under Fed.R.Civ.P. 59. JFS only filed a Motion for Judgment as a Matter of Law. The district court denied both motions on June 30, 1997. On July 24, 1997 RVS and JFS filed Notices of Appeal to the Eighth Circuit Court of Appeals. The appeals were briefed by RVS and JFS separately, but plaintiffs filed a consolidated reply brief. The court of appeals issued its opinion affirming the district court's

actions on August 11, 1999. On September 16, 1999, the appellate court entered an Order denying RVS and JFS's Petitions for Rehearing.

ARGUMENT

I. THE DISTRICT COURT'S USE OF FACTUAL STIPULATIONS OF THE PARTIES WAS PROPER AND DID NOT ACT TO DENY PETITIONER HER RIGHT TO JURY TRIAL

JFS's Petition for a Writ of Certiorari is just the latest chapter in this unfortunate piece of litigation which has trudged through the courts for the past twenty-eight years. Like almost everything else filed by JFS, the Petition has no merit. JFS characterizes the district court and the Eighth Circuit Court of Appeals' actions as an "embarrassment" and a "scandal in the administration of justice". This hyperbole no doubt is a result of JFS's frustration at having finally been held accountable for her fraudulent actions which occurred in the late 1960's and early 1970's. Nothing set forth in the Petition warrants review by this Court. The Eighth Circuit correctly recognized that the district court's actions were warranted and further, that JFS's efforts at attempting to appeal the same were so deficient as to render it impossible for any court to provide any further meaningful review.

JFS asserts three "reasons" to support her Petition, basically parroting the language of Supreme Court Rule 10. She also presents six "questions" for the Court which presumably relate to the reasons supporting her Petition. Many of the questions raised by JFS deal with the district

court's alleged denial of her right to a jury trial (despite receiving a mostly unfavorable verdict after participating in a twenty-eight day jury trial which was deemed "advisory" in nature). As will be discussed later, JFS did not have a right to a jury trial as the remedies sought and granted against her were exclusively equitable in nature. An examination of JFS's brief to the Eighth Circuit reveals that the true dispute she has with the district court and now the Eighth Circuit is the district court's use of certain stipulated facts in making pretrial rulings, which in turn had the effect of taking undisputed factual issues away from the trier of fact.

The Eighth Circuit correctly ruled that "the Steinhilbers were not denied their right to a jury in the district court, as the remedies sought and granted against them were equitable in nature. *See, Kerr v. Charles F. Vatterott & Co.*, No. 98-1677, 1999 WL 493996, at 5 (8th Cir. July 12, 1999) [now found at 184 F.3d 938]; *Tri-State Hotels, Inc. v. FDIC*, 79 F.3d 707, 715 (8th Cir. 1996)." The court then found that it was unable to review any of the other fact-based claims raised by RVS and JFS because the Steinhilbers failed to submit the *necessary* transcripts pursuant to Fed.R.App.P. 10(b)(2).

Since the primary focus of JFS's Petition and prior appeal relates to the district court's use of certain stipulated facts, plaintiffs will address this issue first, and then discuss the remaining questions presented as needed. Simply put, the controversy relating to the stipulated facts does not rise to the level of importance contemplated by Supreme Court Rule 10. The court of appeals has not entered a decision in conflict with another circuit or with this Court nor does the court's decision call for an

exercise of this Court's supervisory powers. As such, this case is not a candidate for the issuance of a writ of certiorari.

On June 30, 1981, a document labeled "Pre-trial Brief of the Parties" was filed with the district court by counsel for plaintiffs. (Plaintiffs' Eighth Circuit Appendix, pp. 1-159) (hereinafter, the "Pretrial Brief"). The Pretrial Brief states in the first paragraph that, "Plaintiffs submit the enclosed revised statements of fact agreed between or among the parties and the parties' respective statements of contested issues of fact and law". The first section of the Pretrial Brief is entitled "Statements of Fact Stipulated Among Plaintiffs and Defendants Winnebago South, Inc., Robert V. Steinhilber, Jack O. Hart, Bonnie Hart and Johnita Steinhilber." The factual statements about which JFS complains are contained in this section of the Pretrial Brief (hereinafter, the "Factual Stipulations"). *Twelve years later*, on August 12, 1993, RVS and JFS each filed a Motion To Set Aside Stipulations. The parties all filed voluminous briefs with respect to the motions to set aside the Factual Stipulations, and the district court heard five days of testimony on the issue during the week of March 21, 1994, and two days of testimony on July 18 and 19, 1994. The only transcript of any of these proceedings is found in Plaintiffs' Eighth Circuit Appendix, pp. 160-166, which only contains the district court's ruling on the matter. In light of the fact that the district court's ruling on this issue resulted from a "mini-trial" which included seven days of testimony and ultimately was supported by the district court's finding of facts, the appropriate standard of review for the appellate court was whether the district court committed "clear error". *See, Cooper Tire &*

Rubber Company v. St. Paul Fire and Marine Insurance Company, 48 F.3d 365 (8th Cir. 1995). Further, the only way for the appellate court to review this issue would be to read the entire transcript of the testimony, which was not provided by JFS.

The district court concluded that the Factual Stipulations were indeed stipulations of fact between plaintiffs and defendants, were admissions of fact by defendants and were also facts determined as a result of judicial proceedings. The district court explained its reasoning as follows:

> Furthermore, the brief labels the factual statements as statements of fact stipulated among plaintiffs and defendants Robert Steinhilber and Johnita Steinhilber and others.
>
> These are the types of assertions that fairly call for a timely response by the Steinhilbers or their counsel if the Steinhilbers do not agree that the factual statements are indeed stipulations agreed to by them. However, the claimed stipulations were not objected to by the Steinhilbers or their counsel until over twelve years after the pretrial brief was filed. Because objections were not filed in a timely manner, I can conclude one of two things: 1) the stipulations were indeed intended by defendants and/or their counsel to be binding stipulations of fact; or 2) the factual statements contained in the stipulations are deemed admitted by defendants and are thus binding.

(Plaintiffs' Eighth Circuit Appendix, p. 163).

The district court further referred to the pretrial orders entered by the court which required the filing of

statements of stipulated fact. The November 25, 1980, Final Pretrial Order required defendants to deny all statements of fact that they did not agree with. Failure to deny resulted in the facts being uncontroverted. The district court therefore ruled that the Factual Stipulations were binding on the parties. Absent a transcript of the testimony used by the district court in rendering its decision on the Stipulated Facts issue, the appellate court was simply unable to provide a review of this issue and the district court's ruling was properly allowed to stand.

II. PETITIONER WAS NOT DEPRIVED OF A FULL, FAIR AND IMPARTIAL JURY TRIAL BY REASON OF THE DISTRICT COURT'S PRETRIAL RULINGS

A careful review of the above arguments raised by JFS once again reveals that the heart of the dispute with the district court's actions revolves around the initial decision on July 19, 1994, wherein the district court found that the Factual Stipulations, for good cause shown, were indeed factual stipulations, would be binding upon the parties, and used during the course of the trial as all factual stipulations should be used. The correctness of the district court's decision is analyzed in detail above. The district court's conclusion necessarily had some impact on related pretrial rulings and the course of the jury trial which followed. The district court encouraged the parties to work toward factual stipulations for a reason. This case, as in many other cases, involves numerous facts about which the parties do not have a disagreement. A complex case like the one at bar indeed contained numerous facts upon which the parties, after a lengthy

process, were able to agree. The agreement resulted in detailed factual stipulations. Once the parties agreed to those facts, they were not open to subsequent challenge (especially twelve years after the stipulations were filed of record with the court). It was therefore proper for the district court to advise the jury of the Factual Stipulations (they were part of the evidence) and to further advise the jury that RVS and JFS had agreed to the Factual Stipulations (since the district court had found that either they had agreed, or their counsel had agreed to the stipulations).

Given the state of the record on appeal, it is clear that the district court reached a correct decision with respect to the Factual Stipulations and did not commit "clear error". It is abundantly clear that the Eighth Circuit's affirmation of that ruling certainly does not rise to the level of an issue contemplated by Supreme Court Rule 10.

III. THE DISTRICT COURT'S RULING ON THE SUMMARY JUDGMENT MOTIONS WAS PROPER

JFS attacks the district court's granting of partial summary judgment on a number of fronts. Her primary argument is perhaps the most confusing. JFS appears to argue that the district court erred by granting *partial* summary judgment under the auspices of Fed.R.Civ.P. 56(c), and implies that partial summary judgment is not available under the rules. A fair reading of Rule 56(c) reveals that it provides instruction as to the mechanism of how to file a motion for summary judgment and how thereon to proceed. Fed.R.Civ.P. 56(d) in turn provides

instruction on how to proceed "[i]f on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary . . . " – in other words, if the court grants *partial* summary judgment. The district court in the present case granted partial summary judgment and properly made findings of fact about which no material question of fact remained. The district court then properly used those findings at trial by instructing the jury of those facts which were no longer before them. If there is no genuine issue about any material fact, summary judgment is proper because it avoids needless and costly litigation and promotes judicial efficiency. *Roberts v. Browning*, 610 F.2d 528, 531 (8th Cir. 1979); *United States v. Porter*, 581 F.2d 698, 703 (8th Cir. 1978). The summary judgment procedure is not a "disfavored procedural shortcut." Rather, it is "an integral part of the Federal Rules as a whole." *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 2555 (1986); *see also, City of Mt. Pleasant v. Associated Electric Cooperative, Inc.*, 838 F.2d 268, 273 (8th Cir. 1988). Instructing the jury on matters properly determined via the summary judgment process does not usurp a jury's role, as argued by JFS. The jury has no role since no material question of fact remains with respect to the court's specific findings. Petitioner then attempts in her Petition to get into the detailed findings made by the district court in its summary judgment motion. Such a factually based review is not the proper use of this Court's resources. *See*, Supreme Court Rule 10.

IV. PETITIONER WAS NOT DENIED A FULL, FAIR AND IMPARTIAL JURY TRIAL BY REASON OF THE DISTRICT COURT'S USE OF THE FACTUAL STIPULATIONS IN DIRECTING THE COURSE OF THE JURY TRIAL

Once again JFS raises a "question" which directly relates to the district court's use of the Factual Stipulations. Specifically, JFS challenges the district court's decision to advise the jury of certain stipulated facts and to prevent JFS and her co-defendants from re-litigating those facts at trial. Once the validity of the district court's actions concerning the Stipulated Facts is affirmed, the various challenges to the use of those facts in pretrial and trial rulings by the district court is really moot. The district court is entitled to use factual stipulations to streamline the presentation of a case to a jury. The management of the case in this manner, and the Eighth Circuit's approval of the same, does not raise issues which rise to the level contemplated in Supreme Court Rule 10 which would necessitate further review or involvement by this Court.

V. SINCE ONLY EQUITABLE ISSUES REMAINED IN THE CASE, THE DISTRICT COURT DID NOT DEPRIVE PETITIONER OF A JURY TRIAL

JFS's next "question" again raises the issue of whether the district court deprived her of a full, fair and impartial jury trial. When more closely examined, however, this issue is comprised of two chief complaints: The district court's decision on the Factual Stipulations (which was discussed in detail above – and will not be

repeated here) and the district court's decision, sitting as a court of equity presiding over the receivership of the assets of Winnebago South, Inc., canceling Winnebago South's Note and Deed of Trust given to JFS. The key argument appears to be that the repercussions from those two decisions had a dramatic impact on the course of events at trial and therefore allegedly deprived JFS of a "full, fair and impartial jury trial".

The decision JFS actually attempted to seek relief from is found at *McFarland v. Winnebago South, Inc.*, 863 F.Supp. 1025 (W.D.Mo. 1994). That decision is well reasoned, never properly appealed, and was rightfully left undisturbed by the Eighth Circuit.

The District Court based its decision on this issue on evidence gathered during the week-long evidentiary hearings held in March and July, 1994, as well as the Factual Stipulations. *McFarland*, 863 F.Supp. at 1027. The Factual Stipulations are in the record on appeal; the *full* transcript of the lengthy evidentiary hearing is not. The appellate court, no doubt after reviewing the Factual Stipulations, came to the same conclusion reached by the district court and found only equitable issues remained, thereby nullifying JFS's reliance upon this Court's decision in *Beacon Theaters, Inc. v. Westover*, 359 U.S. 500, 3 L.Ed.2d 988, 79 S.Ct. 948 (1959) and the Eighth Circuit's decision in *Brownlee v. Yellow Freight Systems, Inc.*, 921 F.2d 745 (8th Cir. 1990). The appellate court correctly found that "the Steinhilbers were not denied their right to a jury trial in the district court, as the remedies sought against them were equitable in nature".

Indeed, there is *nothing* in the record to rebut any of the factual findings articulated by the district court in its ruling wherein it reached the same conclusion. Any factual distinctions raised by JFS in her brief are wholly devoid of support in the record on appeal.

It is readily apparent that the District Court had the legal authority to enter the orders canceling the Note and Deed of Trust. The District Court properly concluded:

> A federal district court presiding over an equity receivership has extremely broad power to supervise the receivership and protect receivership assets. 7 Moore's Federal Practice, ¶ 66.08[4], (citing *Bein v. Robinson*, 208 U.S. 423, 28 S.Ct. 379, 52 L.Ed. 556 (1908); *SEC v. Hardy*, 803 F.2d 1034, 1040 (9th Cir. 1986); *SEC v. Wencke*, 783 F.2d 829 (9th Cir. 1986); *SEC v. Universal Financial*, 760 F.2d 1034 (9th Cir. 1985); and *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 459 (9th Cir. 1984)). Specifically, the receivership court has the power to use summary procedures in allowing, disallowing, and subordinating claims of creditors, so long as creditors have fair notice and a reasonable opportunity to respond. *SEC v. Hardy*, 803 F.2d 1034, 1040 (9th Cir. 1986); *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984).
>
> Because a receivership court sits in equity, it also has the authority to cancel instruments and contracts, including notes and deeds of trust, as part of its equitable powers. *See Cleary v. Cleary*, 273 S.W.2d 340, 345 (Mo. 1954); *Butler County, Missouri v. Campbell*, 353 Mo. 413, 182 S.W.2d 589, 592 (1944); *Signature Pool v. City of Manchester*, 743 S.W.2d 538, 541 (Mo.Ct.App. 1987); 13 Am.Jur.2d, *Cancellation of Instruments*, § 5. A jury

> trial is not available when a party seeks the cancellation of an instrument. *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 459 (9th Cir. 1984); *Spaunhorst v. Spaunhorst*, 650 S.W.2d 650, 654 (Mo.Ct.App. 1983); 13 Am.Jur.2d, *Cancellation of Instruments* § 62.

McFarland v. Winnebago South, Inc., 863 F.Supp. at 1034. JFS fails to offer any persuasive legal authority to rebut the district court's exhaustive and compelling recitation of legal authority for its course of action.

At trial, plaintiffs were not both seeking to rescind their land sales contracts and obtain restitutionary relief from some defendants, and seeking to affirm the very same contracts and obtain compensatory damages from other defendants. As the Eighth Circuit noted in *Slater v. KFC Corp.*, 621 F.2d 932, 935 (8th Cir. 1980): "Missouri law affords an alleged fraud victim an option: he may retain whatever he has received and sue on the contract, or he may return what he has received and sue for rescission and restitution." *See also Cottonhill Investment Co. v. Boatmen's National Bank*, 887 S.W.2d 242, 744 (Mo.App. 1994) ("Where fraud is present a party may either seek to affirm the contract and sue for damages or may disaffirm the contract, including a deed, and sue for rescission."); 37 C.J.S. *Fraud*, § 65 ("One injured by fraud may either elect to accept the situation and recover his damages or he may repudiate the transaction and seek to be placed in status quo, but he cannot do both.")

Under the Interstate Land Sales Act, a defrauded lot purchaser may bring an action in equity – such as for rescission and restitution – against any person or entity that meets the criteria for culpability under the Act.

Plaintiffs consistently maintained throughout the pre-trial proceedings and throughout the trial that the jury could only be advisory as to plaintiffs' equitable claims for rescission and restitution. Only by obtaining an order for rescission would plaintiffs and the Receiver begin to be able to reassemble all of the land into a single, unencumbered parcel which could then be liquidated to provide at least a portion of the restitutionary remedies to which plaintiffs are entitled. Since plaintiffs were exclusively seeking equitable, rather than legal, relief, JFS did not have a right to a jury trial with respect to those claims or remedies. The district court and the Eighth Circuit correctly reached this conclusion.

VI. PETITIONER'S OWN FAILURE TO PROVIDE AN ADEQUATE RECORD ON APPEAL, INCLUDING A FULL TRANSCRIPT OF MATTERS SOUGHT TO BE REVIEWED, DOES NOT PROVIDE GROUNDS FOR FURTHER REVIEW BY THE SUPREME COURT

The appeal briefs submitted by JFS and RVS to the Eighth Circuit, and the lack of record on appeal transmitted to the appellate court made it virtually impossible for plaintiffs to respond to the appeal and *defacto* impossible for the appellate court to conduct any meaningful review. For example, RVS's brief contained a section labeled "Background Facts", which was adopted in *toto* by JFS in lieu of setting forth her own required Statement of Facts. Beginning at page two of his brief, and continuing thereafter for a full *twenty pages*, RVS provided a comprehensive narrative of what *he* believed the relevant background facts to be and then, incredibly, attached an

affidavit wherein he swore that the facts were true. The affidavit is preceded by the telling statement: *"All of the facts in this 'Statement of the Case' were offered in evidence, with supporting documentation for practically all, but the vast majority of RVS's testimony and other evidence was denied admittance, and most of the remaining was 'chopped-up' by interruptions and 'picked to pieces', so to speak, by the Court and Plaintiffs' Counsel with Court approval."* (emphasis in original). None of the "facts" set forth by RVS (and thereafter adopted by JFS) were referenced to the record on appeal as required by Fed.R.App.P. 28. Indeed, it would have been impossible since there is *no* credible record on appeal of evidentiary matters by reason of RVS and JFS's refusal to provide a *full* transcript. It is appellants' responsibility to provide the appellate court with a proper record on appeal. In the absence of a transcript, certain issues are forfeited by appellants since the appellate court is unable to review the evidentiary record upon which the district court based its rulings. *See*, Fed.R.App.P. 10(b)(2), "If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant *shall* include in the record a transcript of all evidence relevant to such finding or conclusion." (emphasis supplied). *See also, Schmid v. United Brotherhood of Carpenters and Joiners of America*, 827 F.2d 384, 386 (8th Cir. 1987) ("On the basis of the record before the court, it is impossible to determine the accuracy and context of the judge's comments allegedly indicating bias, evaluate the challenged evidentiary rulings, or rule on the weight of the evidence."); *Syncom Capital Corporation v. Wade*, 924 F.2d 167 (9th Cir. 1991) (Appeal dismissed because of the

appellant's failure to provide a trial transcript); *United States v. Vasquez*, 985 F.2d 491 (10th Cir. 1993) (Failure to file transcript precludes review of trial court's evidentiary ruling; challenges to admission of evidence will not be considered on appeal in absence of record containing those portions of transcript on which appellant relies); and, *Gramercy Mills, Inc. v. Wolens*, 63 F.3d 569 (7th Cir. 1995) (Failure to comply to with federal rule requiring transcript to be included in the record on appeal where a party challenges that insufficient evidence supports the verdict is ground for forfeiture of the claim and is also grounds for sanctions). Further, an appellate court cannot consider evidence that is not contained in the record below. *Dakota Industries, Inc. v. Dakota Sportswear, Inc.*, 988 F.2d 61, 63 (8th Cir. 1993). The affidavit contained in RVS's brief (adopted in full by JFS) is such impermissible evidence which was properly ignored by the appellate court.

Even if a transcript had been available to the appellate court, RVS already acknowledged that the "vast majority" of the "testimony" upon which he based his statement of facts was denied admission into evidence. He basically attempted to tell the appellate court, for the first time, what he allegedly *tried* to get before the district court and the jury. As such, it is a highly improper post-trial proffer of evidence to an appellate court. While the district court's ruling on the admissibility of evidence may be a proper issue for appellate review, it must be presented to the appellate court properly. *See*, Fed.R.Evid. 103. RVS's statement of facts is *not* the proper way to present "facts" in an appellate brief and was properly ignored by the Eighth Circuit. While courts may apply

less stringent standards to parties proceeding pro se[1] than to parties represented by counsel, pro se parties must still brief issues and *reasonably* comply with standards for appellate briefs. *See, Grand v. Cuellar, R.A.*, 59 F.3d 523 (5th Cir. 1995) (Pro se litigants, like all other parties, must abide by the Federal Rules of Appellate Procedure).

Petitioner was not "deprived" of proper review by the Eighth Circuit. Any deficiency in the appellate court's ability to review the district court's actions is a direct result of her failure to provide a sufficient record. Such self inflicted hindrances cannot form the proper basis for review under Supreme Court Rule 10.

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[1] It should be noted that both RVS and JFS are licensed attorneys. Thus, they should not be treated like typical pro se litigants. In fact, a quick search of cases in the Westlaw database reveals that RVS is no stranger to the courthouse. *See, Robinson v. Morrison, Inc.*, 501 So.2d 1323 (D.Ct.App.Fla. 1987) (RVS counsel for appellant); *Trinh Trung Do v. Amoco Oil Company*, 510 So.2d 1063 (D.Ct.App.Fla. 1987) (RVS counsel for appellant); *Steinhilber v. Thompson*, 1991 WL 219393 (W.D. Mo. 1991) (RVS pro se); *Steinhilber v. Watson, Ess, Marshall & Enggas*, 141 F.3d 1170, 1998 WL 115804 (8th Cir. 1998) (RVS pro se); *Steinhilber v. Lamoree*, 825 F.Supp. 1003 (D.Ct. Fla. 1992) (RVS pro se); *Steinhilber v. Lake Winnebago Home Owner's Association*, 1991 WL 220249 (W.D. Mo. 1991) (RVS pro se); *McFarland v. Winnebago South, Inc.*, 863 F.Supp. 1025 (W.D.Mo 1994) (RVS pro se); *United States v. Steinhilber*, 484 F.2d 386 (8th Cir. 1973) (RVS criminal defendant); *In re Steinhilber*, 507 U.S. 907, 113 S.Ct. 1369 (1993) (RVS petitioner – not disclosed in report whether RVS represented himself in this Petition for Writ of Mandamus before the United States Supreme Court, although it falls within the time span in which he represented himself pro se in the instant case as well as others).

CONCLUSION

WHEREFORE, for the reasons stated above, respondents respectfully pray this Court deny JFS's Petition for a Writ of Certiorari.

Respectfully submitted,

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